Procedure governing safe harbour rules for income attribution in case of income from business and profession.

101. (1) For exercising option for safe harbour, the assessee shall furnish Form No. 49, complete in all respects, to the Assessing Officer before furnishing the return of income under section 263 for the relevant tax year.

(2) The income from eligible business shall be determined in accordance with the provisions of the Act without having regard to the provisions of rule 100(2), where the assessee does not exercise option for safe harbour under rule 100(1).

(3) The Assessing Officer may declare the option for safe harbour as invalid by an order in writing, where the assessee has—

(*a*) availed the safe harbour by furnishing incorrect facts; or

(*b*) concealed facts related to his business.

(4) The Assessing Officer shall afford a reasonable opportunity of being heard to the assessee before declaring the option for safe harbour invalid under sub-rule (3).

(5) The Assessing Officer shall serve a copy of the order referred to under sub-rule (3) to the assessee and the other provisions of the Act shall apply accordingly.

(6) Form No. 49 shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorised to verify the return of income of the assessee under section 265.

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Mutual agreement procedure not to apply where safe harbour for income attribution in case of income from business and profession is exercised.

102. The assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation as referred to in section 159 in relation to an eligible business, if the assessee has exercised the option for safe harbour under rule 101 in respect of such business and such option is not declared invalid under the said rule.

Meaning of expressions used in matters in respect of advance pricing agreement.

103. For the purposes of this rule and rules 104 to 120,—

(*a*) "agreement" means an advance pricing agreement entered into between the Board and the applicant, with the approval of the Central Government, as referred to in section 168(1);

(*b*) "application" means an application for advance pricing agreement made under rule 106;

(*c*) "applicant" means a person who has made an application;

(*d*) "bilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 122 between the competent authority of India with the competent authority of the other country regarding the most appropriate transfer pricing method or the arms' length price;

(*e*) "competent authority of India" means an officer authorised by the Central Government for the purpose of discharging the functions relating to any agreement entered into under section 159 of the Act;

(*f*) "covered transaction" means the international transaction or transactions for which agreement has been entered into;

(*g*) "critical assumptions" means the factors and assumptions which are so critical and significant, that if changed, the parties to the agreement shall not continue to be bound by the agreement;

(*h*) "most appropriate transfer pricing method" means a transfer pricing method, referred to in section 165(1), being the most appropriate, having regard to the nature of transaction or class of transaction or class of associated persons or function performed by such persons or such other relevant factors specified by the Board under rules 79 and 80;

(*i*) "multilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 122 between the competent authority of India with the competent authorities of the other countries regarding the most appropriate transfer pricing method or the arms' length price;

(*j*) "rollback year" means any tax year, falling within the period not exceeding four tax years, preceding the first of the tax years referred to in section 168(4);

(*k*) "tax treaty" means an agreement under section 159 for the avoidance of double taxation;

(*l*) "team" means advance pricing agreement team consisting of income-tax authorities as constituted by the Board and including such number of experts in economics, statistics, law or any other field as may be nominated by the Principal Chief Commissioner of Income-tax (International Taxation); and

(*m*) "unilateral agreement" means an agreement between the Board and the applicant, which is neither a bilateral nor a multilateral agreement.

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Persons eligible to apply.

104. A person shall be eligible to enter into an agreement under these rules, if he—

(*a*) has undertaken an international transaction; or

(*b*) is contemplating to undertake an international transaction.

Pre-filing consultation.

105. (1) An eligible person may make an application in Form No. 50 to the Principal Chief Commissioner of Income-tax (International Taxation) for a pre-filing consultation.

(2) On receipt of the application, the team shall hold pre-filing consultation with the eligible person who has applied under sub-rule (1).

(3) The competent authority of India or his representative shall be associated in pre-filing consultation involving bilateral or multilateral agreement.

(4) The pre-filing consultation shall, among other things,—

(*a*) determine the scope of the agreement;

(*b*) identify transfer pricing issues;

(*c*) determine the suitability of international transaction for the agreement; and

(*d*) discuss broad terms of the agreement.

(5) The pre-filing consultation shall—

(*a*) neither bind the Board or the eligible person who has applied under sub-rule (1) to enter into an agreement or initiate the agreement process;

(*b*) nor be deemed to mean that the person has applied for entering into an agreement.

(6) The provisions of this rule shall not apply in the case of renewal of the agreement.

Application for advance pricing agreement.

106. (1) An eligible person may furnish an application in Form No. 51 along with requisite fee of twenty lakh rupees for entering into an agreement.

(2) The application shall be furnished to Principal Chief Commissioner of Income- tax (International Taxation) in case of unilateral agreement and to the competent authority of India, in case of bilateral or multilateral agreement.

(3) The application may be filed by the eligible person at any time—

(*a*) before the first day of the first tax year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or

(*b*) before undertaking the transaction in respect of remaining transactions.

(4) The application shall be accompanied by the proof of payment of fees of twenty lakh rupees.

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Withdrawal of application for agreement.

107. (1) The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement by furnishing an intimation to the Principal Chief Commissioner of Income-tax (International Taxation), in case of unilateral agreement and to the competent authority of India, in case of bilateral or multilateral agreement.

(2) The fee paid shall not be refunded on withdrawal of application by the applicant.

Preliminary processing of application.

108. (1) Application filed in Form No. 51 shall be complete in all respects and accompanied by requisite documents.

(2) The Principal Chief Commissioner of Income-tax (International taxation), in the case of a unilateral agreement and competent authority of India, in the case of bilateral or multilateral agreement shall serve a deficiency letter on the applicant, if—

(*a*) any defect is noticed in the application in Form No. 51; or

(*b*) any relevant document is not attached thereto; or

(*c*) the application is not in accordance with understanding reached in pre-filing consultation referred to in rule 105.

(3) The deficiency letter in sub-rule (2) shall be served on the applicant within one month from the end of the month in which the application has been received.

(4) The applicant shall remove the deficiency or modify the application within a period of thirty days from the date of receipt of the deficiency letter.

(5) The Principal Chief Commissioner of Income-tax (International Taxation) or the competent authority of India, as the case may be, on being satisfied, may pass an order providing that application shall not be allowed to be proceeded with, if the application is defective and defect is not removed by applicant in accordance with sub-rule (4).

(6) The order referred to in sub-rule (5) shall be passed after providing a reasonable opportunity of being heard to the applicant.

(7) In a case where an application is not allowed to be proceeded with under sub-rule (5), the fee paid by the applicant shall be refunded.

Procedure.

109. (1) If the application referred to in rule 108 has been allowed to be proceeded with, the team or the competent authority of India, or his representative, shall process the same in consultation and discussion with the applicant in accordance with provisions of this rule.

(2) For the purposes of sub-rule (1), the team, or the competent authority of India, or its representative may,—

(*a*) hold meetings with the applicant on such time and date as it deems fit; or

(*b*) call for additional document or information or material from the applicant; or

(*c*) visit the applicant's business premises; or

(*d*) make such inquiries as it deems fit in the circumstances of the case.

(3) In the case of a unilateral agreement, the proceedings referred to in sub-rule (2) may, where it is possible, be completed within a period of one year from the end of the financial year in which application referred to in rule 108 has been allowed to be proceeded with.

(4) For the purpose of sub-rule (1), the applicant may provide further document and information for consideration of the team, or the competent authority of India, or his representative.

(5) For bilateral or multilateral agreement, the competent authority shall forward the application to the Principal Chief Commissioner of Income-tax (International Taxation), who shall assign it to one of the teams.

(6) The team, to whom the application has been assigned under sub-rule (4), shall carry out the enquiry and prepare a draft report which shall be forwarded by the Principal Chief Commissioner of Income-tax (International Taxation) to the competent authority of India.

(7) If the applicant makes a request for bilateral or multilateral agreement in the application, the competent authority of India shall in addition to the procedure provided in this rule, invoke the procedure provided in rule 122.

(8) The Principal Chief Commissioner of Income-tax (International Taxation) (for unilateral agreement) or the competent authority of India (for bilateral or multilateral agreement) and the applicant shall prepare a proposed mutually agreed draft agreement enumerating the result of the process referred to in sub-rule (1) including the effect of the arrangement referred to in rule 122(5) which has been accepted by the applicant in accordance with rule 122(8).

(9) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.

(10) Once an agreement has been entered into, the Principal Chief Commissioner of Income-tax (International Taxation) or the competent authority of India, as the case may be, shall cause a copy of the agreement to be sent to the Commissioner of Income-tax having jurisdiction over the assessee.

(11) Where no agreement has been entered within a period of three years from the end of the financial year in which application referred to in rule 108 is furnished then the Board may direct that the proceedings in respect of such an application shall be treated as closed, if–

(*a*) the applicant has not provided any document or information or material relevant, as required under sub-rule (2)(*ii*), for proceeding with the application; or

(*b*) the applicant fails to comply with any direction issued for holding meeting, facilitating the visit of premise, or making of inquiries in terms of sub-rule (2).

(12) The directions under sub-rule (11) shall be given after providing a reasonable opportunity of being heard to the applicant.

(13) Where an application is made for a unilateral advance pricing agreement where the primary covered transaction is the provision of information technology services referred to in rule 89(2) [Table: Sl. No. 1] and the agreement is not entered into within a period of two years from the end of the quarter in which the application is made, the proceedings in respect of such an application shall be treated as closed.

(14) For the purposes of sub-rule (13), the assessee may request for an additional period of six months beyond the time limit mentioned therein and, in such case, the aforesaid time limit shall be extended by an additional period of six months.

(15) Where the proceedings are closed, the fee paid by the applicant under rule 106 shall not be refunded.

Terms of the agreement.

110. (1) An agreement may among other things, include—

(*a*) the international transactions covered by the agreement;

(*b*) the agreed transfer pricing methodology, if any;

(*c*) determination of arm's length price, if any;

(*d*) the manner in which the arm's length price is to be determined, if any;

(*e*) definition of any relevant term to be used in clause (*b*), (*c*) or (*d*);

(*f*) critical assumptions;

(*g*) rollback provisions referred to in rule 111; and

(*h*) the conditions, if any, other than provided in the Act or these rules.

(2) The agreement shall not be binding on the Board or the assessee, if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.

(3) The binding effect of agreement shall cease only if any party has given due notice to the concerned other party or parties.

(4) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement may be revised or cancelled, as the case may be.

(5) The assessee which has entered into an agreement shall give a notice in writing of such change in any of the critical assumptions or failure to meet conditions to the Principal Chief Commissioner of Income-tax (International Taxation), as soon as it is practicable to do so.

(6) The Board shall give a notice in writing of such change in critical assumptions or failure to meet conditions to the assessee, as soon as it comes to the knowledge of the Board.

(7) The revision or the cancellation of the agreement shall be in accordance with rules 115 and 116, respectively.

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Roll back of Agreement.

111. (1) Subject to the provisions of this rule, the agreement may provide for determining the arm's length price in relation to an international transaction, or specify the manner in which such arm's length price shall be determined during the rollback year (herein referred to as the rollback provision).

(2) The rollback provision shall be subject to the following:—

(*a*) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;

(*b*) the return of income for the relevant rollback year has been or is furnished by the applicant within the time specified in section 263(1)(*c*);

(*c*) the report in respect of the international transaction had been furnished within the time specified in clause (*b*);

(*d*) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and

(*e*) the application seeking rollback in Form No. 51 has been made in accordance with sub-rule (5).

(3) Irrespective of anything contained in sub-rule (2), the rollback provision shall not be provided in respect of an international transaction for a rollback year, if—

(*a*) the determination of arm's length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or

(*b*) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

(4) Where the rollback provision specifies the manner in which arm's length price shall be determined in any rollback year, then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any tax year to which the agreement applies, not being a rollback year.

(5) The applicant may, if he desires to enter into an agreement with rollback provision, furnish along with the application, the request for the same in Form No. 51 with proof of payment of an additional fee of Rs. 500000.

Amendments to application.

112. (1) An applicant may request in writing for an amendment to an application at any stage, before the finalisation of the terms of the agreement.

(2) The Principal Chief Commissioner of Income-tax (International Taxation) (for unilateral agreement) or the competent authority of India (for bilateral or multilateral agreement) may, allow the amendment to the application, if such an amendment does not have effect of altering the nature of the application as originally filed.

Furnishing of annual compliance report.

113. (1) The assessee shall furnish an annual compliance report to the Principal Chief Commissioner of Income-tax (International Taxation) for each year covered in the agreement.

(2) The annual compliance report shall be in Form No. 52.

(3) The assessee shall file the annual compliance report for each year covered in the agreement, within thirty days of the due date of filing the income-tax return for that year, or within ninety days of entering into an agreement, whichever is later and send it to Principal Chief Commissioner of Income-tax (International Taxation).

(4) The Principal Chief Commissioner of Income-tax (International Taxation) shall send one copy of annual compliance report to the competent authority of India, one copy to the Commissioner of Income-tax who has the jurisdiction over the income-tax assessment of the assessee and one copy to the Transfer Pricing Officer having the jurisdiction over the assessee.

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Compliance audit of agreement.

114. (1) The Transfer Pricing Officer in respect of arms' length price and having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.

(2) For the purposes of sub-rule (1), the Transfer Pricing Officer may require—

(*a*) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method; and

(*b*) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.

(3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Principal Chief Commissioner of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority of India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.

(4) The Principal Chief Commissioner of Income-tax (International Taxation) shall forward the report to the Board, where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.

(5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in rule 113 is received by such officers.

(6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer, if an agreement has been entered into under rule 109, except where the agreement has been cancelled under rule 116.

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Revision of an agreement.

115. (1) An agreement, subsequent to it having been entered into, may be revised by the Board, if,—

(*a*) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into; or

(*b*) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(*c*) there is a request from competent authority of the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(2) An agreement may be revised by the Board, either *suo motu*, or on request of the assessee, or the competent authority of India, or the Principal Chief Commissioner of Income-tax (International Taxation).

(3) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

(4) In case the assessee is not in agreement with the proposed revision, the agreement may be cancelled in accordance with rule 116.

(5) In case the Board is not in agreement with the request of the assessee for revision of the agreement, the Board shall reject the request in writing giving reason for such rejection.

(6) For the purpose of arriving at the agreement for the proposed revision, the procedure provided in rule 109 may be followed, so far as they apply.

(7) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

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Cancellation of an agreement.

116. (1) An agreement shall be cancelled by the Board for any of the following reasons:

(*a*) the compliance audit referred to in rule 114 has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement; or

(*b*) the assessee has failed to file the annual compliance report in time; or

(*c*) the annual compliance report furnished by the assessee contains material errors; or

(*d*) the agreement is to be cancelled under rule 115(4) or rule 117(7).

(2) The Board shall give a reasonable opportunity of being heard to the assessee, before proceeding to cancel an application.

(3) The competent authority of India shall communicate with the competent authority of the other country or countries and provide reason for the proposed cancellation of the agreement in case of bilateral or multilateral agreement.

(4) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of submission of the assessee, if any.

(5) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(6) The order under section 168(7), declaring the agreement as *void ab initio*, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of submission of the assessee, if any.

(7) The order of cancellation shall be intimated to the Assessing Officer and the Transfer Pricing Officer, having jurisdiction over the assessee.

Procedure for giving effect to rollback provision of an Agreement.

117. (1) The effect to the rollback provisions of an agreement shall be given in accordance with this rule.

(2) The applicant shall furnish modified return of income referred to in section 169 in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.

(3) The modified return referred to in sub-rule (2) shall be furnished along with the modified return to be furnished in respect of first of the tax years for which the agreement has been requested for in the application.

(4) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

(5) If any appeal filed by the Assessing Officer or the Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on an issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the Assessing Officer or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

(6) The applicant, the Assessing Officer or the Commissioner, shall inform the Dispute Resolution Panel, or the Commissioner (Appeals), or the Appellate Tribunal, or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so.

(7) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.

Relief in tax payable under section 206(1) due to operation of section 206(1)(*i*).

118. (1) For the purposes of section 206(1)(*i*), the tax payable by the assessee company under section 206(1), for the tax year referred to in that section, shall be reduced by the following amount, namely:—

(A–B) – (C–D),

Where,—

A = tax payable by the assessee company under section 206(1) on the book profit of the tax year including the past income and where there is no tax payable, the value shall be taken as zero;

B = tax payable by the assessee company under section 206(1) on the book profit of the tax year excluding the past income and where there is no tax payable, the value shall be taken as zero;

C = aggregate of tax payable by the assessee company under section 206(1) on the book profit of past year or years, referred to in item D, after increasing the book profit with the relevant past income of such year or years and where there is no tax payable, the value shall be taken as zero; and

D = aggregate of tax payable by the assessee company under section 206(1) on the book profit of those past year or years to which the past income belongs and where there is no tax payable, the value shall be taken as zero.

(2) If the value of (A–B) – (C–D) is negative, its value shall be deemed to be zero.

(3) For the purposes of sub-rule (1) past income shall be the amount of income of past year or years included in the book profit of the tax year on account of an advance pricing agreement entered into by the assessee under section 168 or on account of secondary adjustment required to be made under section 170.

(4) On application of provision of sub-rule (1), the tax credit allowed to the assessee under section 206(1)(*m*) shall be reduced by the amount allowed under sub-rule (1).

(5) A claim for relief under section 206(1)(*i*) shall be made by an assessee company in Form No. 53 by uploading signed printout of said Form in the manner specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, and which shall be verified by the person who is authorised to verify the return of income of the assessee company under section 265.

Renewing an agreement.

119. Request for renewal of an agreement may be made as a new application in Form No. 54 for agreement, using the same procedure as outlined in these rules except pre-filing consultation as referred to in rule 105.

Miscellaneous.

120. (1) Mere filing of an application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

(2) The negotiation between the competent authority of India and the competent authority of the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries.